

## Senate Bill No. 818

### CHAPTER 257

An act to amend Sections 71801, 71802, 71804, 71805, 71806, and 71828 of the Government Code, and to amend Section 1 of Chapter 1047 of the Statutes of 2002, relating to courts.

[Approved by Governor September 1, 2003. Filed  
with Secretary of State September 2, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 818, Escutia. Trial courts: interpreters.

The Trial Court Interpreter Employment and Labor Relations Act establishes procedures governing the employment and compensation of certified and registered trial court interpreters and court interpreters pro tempore employed by the courts.

This bill would revise a number of the implementation dates set forth in that act. The bill would, among other things, extend the ending date of the regional transition period for the program from January 1, 2005, to July 1, 2005. The bill would prohibit the trial courts from changing existing job classifications of certified or registered interpreters hired by trial courts prior to December 31, 2002, during the regional transition period for the program or during the term of an existing contract. This bill would also make other revisions to the act, including technical nonsubstantive changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 71801 of the Government Code is amended to read:

71801. For purposes of this chapter, the following definitions shall apply:

(a) "Certified interpreter" and "registered interpreter" have the same meanings as in Article 4 (commencing with Section 68560) of Chapter 2. This chapter does not apply to sign language interpreters.

(b) "Cross-assign" and "cross-assignment" refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court, pursuant to Section 71810.

(c) "Employee organization" means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.

(d) “Mediation” means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court or regional court interpreter committee and the recognized employee organization through interpretation, suggestion, and advice.

(e) “Meet and confer in good faith” means that a trial court or regional court interpreter committee or those representatives it may designate, and representatives of a recognized employee organization, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, or when the procedures are used by mutual consent.

(f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and regulations” mean policies, procedures, plans, rules, or regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) “Recognized employee organization” means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region, pursuant to this chapter.

(h) “Regional court interpreter employment relations committee” means the committee established pursuant to Section 71807.

(i) “Regional transition period” means the period from January 1, 2003, to July 1, 2005, inclusive, except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization.

(j) “Transfer” means transfer within the trial court as defined in the trial court’s personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) “Trial court” means the superior court in each county.

SEC. 2. Section 71802 of the Government Code is amended to read:

71802. (a) On and after July 1, 2003, trial courts shall appoint trial court employees, rather than independent contractors, to perform spoken language interpretation of trial court proceedings. An interpreter may be an employee of the trial court or an employee of another trial court on cross-assignment.



(b) Notwithstanding subdivision (a), a trial court may appoint an independent contractor to perform spoken language interpretation of trial court proceedings if one or more of the following circumstances exists:

(1) An interpreter who is not registered or certified is appointed on a temporary basis pursuant to Rule 984.2 of the California Rules of Court.

(2) The interpreter is over 60 years of age on January 1, 2003, or the sum of the interpreter's age in years on January 1, 2003, and the number of years the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, is equal to or greater than 70, the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to June 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee.

(3) The interpreter is paid directly by the parties to the proceeding.

(4) The interpreter has performed services for the trial courts as an independent contractor prior to January 1, 2003, the interpreter notifies the trial court in writing prior to June 1, 2003, that the interpreter is precluded from accepting employment because of the terms of an employment contract with a public agency or the terms of a public employee retirement program, the interpreter provides supporting documentation, and the interpreter requests in writing the opportunity to perform services for the trial court as an independent contractor rather than an employee.

(c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken language interpretation of trial court proceedings if all of the following circumstances exist:

(1) The trial court has assigned all the available employees and independent contractors appointed pursuant to paragraphs (2) and (4) of subdivision (b) in the same language pair and has need for additional interpreters. Employees and independent contractors who are appointed pursuant to paragraphs (2) and (4) of subdivision (b) shall be given priority for assignments over independent contractors who are appointed pursuant to this subdivision.

(2) The interpreter has not previously been appointed as an independent contractor by the same trial court on more than 100 court days or parts of court days during the same calendar year, except that the trial court may continue to appoint an independent contractor on a day-to-day basis to complete a single court proceeding, if the trial court



determines that the use of the same interpreter to complete that proceeding is necessary to provide continuity. An interpreter who has been appointed by a trial court as an independent contractor pursuant to this subdivision on more than 45 court days or parts of court days during the same calendar year shall be entitled to apply for employment by that trial court as a court interpreter pro tempore and the trial court may not refuse to offer employment to the interpreter, except for cause. For purposes of this section, “for cause” means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(3) The trial court does not provide independent contractors appointed pursuant to this subdivision with lesser duties or more favorable working conditions than those to which a court interpreter pro tempore employed by that trial court would be subject for the purpose of discouraging interpreters from applying for pro tempore employment with the trial court. The trial court is not required to apply the employee training, disciplinary, supervisory, and evaluation procedures of the trial court to any independent contractor.

(d) Only registered and certified interpreters may be hired by a trial court as employees to perform spoken language interpretation of trial court proceedings. Interpreters who are not certified or registered may be assigned to provide services as independent contractors only when certified and registered interpreters are unavailable and the good cause and qualification procedures and guidelines adopted by the Judicial Council pursuant to subdivision (c) of Section 68561 have been followed.

(e) A trial court that has appointed independent contractors pursuant to paragraph (1) of subdivision (b) or to subdivision (c) for a language pair on more than 60 court days or parts of court days in the prior 180 days shall provide public notice that the court is accepting applications for the position of court interpreter pro tempore for that language pair and shall offer employment to qualified applicants.

(f) Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

SEC. 3. Section 71804 of the Government Code is amended to read:

71804. (a) Each trial court shall offer to employ as a court interpreter pro tempore each interpreter who meets all of the following criteria:

(1) The interpreter is certified or registered.



(2) The interpreter has provided services to the same trial court as an independent contractor on at least either:

(A) Thirty court days or parts of court days in both calendar year 2001 and calendar year 2002.

(B) Sixty court days or parts of court days in calendar year 2002.

(3) The interpreter has applied for the position of court interpreter pro tempore prior to July 1, 2003, and has complied with reasonable requirements for submitting an application and providing documentation.

(4) The interpreter's application is not rejected by the trial court for cause.

(b) Each trial court shall begin accepting applications for court interpreters pro tempore by no later than May 1, 2003. Court interpreters who qualify for employment pursuant to this section shall receive offers of employment within 30 days after an application is submitted. Applicants shall have at least 15 days to accept or reject an offer of employment. The hiring process for applicants who accept the offer of employment shall be completed within 30 days after acceptance, but the trial court need not set employment to commence prior to July 1, 2003.

(c) For purposes of this section, "for cause" means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(d) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated during the regional transition period shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

SEC. 4. Section 71805 of the Government Code is amended to read:

71805. (a) Until the conclusion of the regional transition period, all interpreters who are employed by a trial court shall be classified as court interpreters pro tempore, except as provided in Section 71828, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization.

(b) This chapter does not require trial courts to alter their past practices regarding the assignment of interpreters. If an interpreter had a regular assignment for the trial court as an independent contractor prior to the effective date of this chapter, nothing in this chapter shall prohibit the trial court from continuing to appoint the same interpreter to the same assignment as a court interpreter pro tempore during the regional transition period.



(c) During the regional transition period, the existing statewide per diem pay rate may not be reduced, and the existing statewide compensation policies set by the Judicial Council shall be maintained, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization. The per diem pay rate and compensation policies shall apply to court interpreters pro tempore.

(d) Court interpreters pro tempore are not subject to disciplinary action during the regional transition period, except for cause.

(e) For purposes of this section, “for cause” means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(f) During the regional transition period, a trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of the individual’s membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of rights under this chapter, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.

(g) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

SEC. 5. Section 71806 of the Government Code is amended to read:

71806. (a) At the conclusion of the regional transition period, trial courts in the region may employ certified and registered interpreters to perform spoken language interpretation for the trial courts in full-time or part-time court interpreter positions created by the trial courts with the authorization of the regional committee and subject to meet and confer in good faith. The courts may also continue to employ court interpreters pro tempore.

(b) For purposes of hiring interpreters for positions other than court interpreter pro tempore, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, trial courts shall consider applicants in the following order of priority:

(1) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during each of the past five years, including time spent performing work for the trial court as an independent contractor.



(2) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in each of the past five years, including time spent performing work for the trial court as an independent contractor.

(3) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in at least two of the past four years, including time spent as an independent contractor.

(4) Other applicants.

(c) A trial court may not reject an applicant in favor of an applicant with lower priority except for cause.

(d) For purposes of this section, “for cause” means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(e) Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for purposes of obtaining that documentation.

(f) Unless the parties to a dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes about whether this section has been violated shall be resolved by binding arbitration through the California State Mediation and Conciliation Service.

(g) Subdivision (b) shall become inoperative on January 1, 2007, unless otherwise provided by a memorandum of understanding or agreement with a recognized employee organization, and on and after that time hiring shall be in accordance with the personnel rules of the trial court.

SEC. 6. Section 71828 of the Government Code is amended to read:

71828. (a) This chapter does not apply to trial courts in Solano and Ventura Counties. Labor and employment relations for court interpreters employed by trial courts in Solano and Ventura Counties shall remain subject to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), and nothing in this chapter shall be construed to affect the application of the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), to court interpreters employed by those counties.

(b) If an interpreter employed by a trial court in a different county accepts a temporary appointment to perform services for a trial court in the Solano or Ventura County, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline





and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(c) If an interpreter employed by a trial court in Solano or Ventura County accepts a temporary appointment to perform services for another trial court, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(d) This chapter also does not apply to court interpreters who have been continuously employed by a trial court in any county beginning prior to September 1, 2002, and who are covered by a memorandum of understanding or agreement entered into pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600) and to future employees hired in the same positions as replacements for those employees. For any other certified or registered interpreters hired by trial courts as employees prior to December 31, 2002, the trial courts may not change existing job classifications and may not reduce their wages and benefits during the regional transition period or during the term of an existing contract, whichever is longer.

SEC. 7. Section 1 of Chapter 1047 of the Statutes of 2002 is amended to read:

Section 1. The Legislature finds and declares as follows:

(a) Court interpreters provide constitutionally mandated spoken language services to the court, attorneys, defendants, victims, and witnesses in trial court proceedings. These services are vital to ensuring access and fairness in the trial courts. The purpose of this act is to provide for the fair treatment of court interpreters, to enhance access to the court system for persons who depend upon the services of interpreters, and to promote sound court management.

(b) The intent of the Legislature is to provide that the trial courts shall make an orderly transition from relying on independent contractors to using employees for interpretation services. Accordingly, this act provides for a transition period of up to two years during which the trial courts shall hire as employees court interpreters pro tempore who shall perform work as needed on a per diem basis. After the transition period, the trial courts may continue to employ court interpreters pro tempore as well as create other interpreter classifications.

